Filed 8/17/10 In re H.T. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| In re H.T., a Person Coming Under the Juvenile Court Law. | 2d Juv. No. B220674<br>(Super. Ct. No. J1252184)<br>(Santa Barbara County) |
| SANTA BARBARA COUNTY CHILD WELFARE SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>M.T.,<br><br>Defendant and Appellant. | |

M.T. (Mother) appeals an order of the juvenile court declaring that her child H. is adoptable and that the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) (ICWA) is inapplicable, and terminating her parental rights. (Welf. & Inst. Code, § 366.26.)[1] We affirm.

*FACTS AND PROCEDURAL HISTORY*

On September 10, 2007, Santa Barbara County Child Welfare Services (CWS) filed a dependency petition on behalf of four-year-old H. CWS alleged that

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

Mother left H. with A.T. (Father), an intravenous drug user, and that Mother and Father have criminal histories involving substance abuse and domestic violence. Mother also uses methadone for pain control. (§ 300, subd. (b).)

On September 11, 2007, the juvenile court ordered that H. be detained. Mother and Father later submitted to jurisdiction on an amended petition supported by the social worker's report. On November 8, 2007, the court sustained the allegations of the amended dependency petition, ordered CWS to provide family reunification services to Mother and Father, and continued H. as a dependent child. CWS placed H. with the paternal grandparents.

The family reunification services plan required Mother and Father to obtain substance abuse treatment, submit to random drug testing, attend Narcotics Anonymous or Alcoholics Anonymous meetings, obtain mental health counseling, participate in parent education, and achieve a stable and appropriate residence, among other things.

Mother completed parent education but did not participate otherwise in her family reunification services plan. She informed CWS that she did not have a substance abuse problem and would not participate in treatment. Father completed his services plan, but informed CWS that he planned to live with Mother. The social worker informed Father that Mother had not completed her reunification services plan and that H. would be endangered by a return to Mother's custody.

At the combined 12- and 18-month review hearing held on February 27, 2009, Father testified that he was living with Mother and her mother in Northern California. The juvenile court received evidence of CWS reports and testimony from Father and the social worker, and then terminated reunification services for Mother and Father. The court set a permanent plan hearing pursuant to section 366.26. We denied Mother's and Father's petitions for extraordinary writ. (*M.T. v. Superior Court* (July 15, 2009, B214337) [nonpub. opn.].)

*ICWA Notices and Proceedings*

At the September 11, 2007, detention hearing, Father stated that he had no Indian ancestry according to his knowledge. Mother stated that she has "a small amount

of Cherokee Indian [ancestry]." The juvenile court ordered Mother to provide CWS with information regarding her Indian heritage. Mother informed CWS that her father, Ronald E., had Cherokee heritage, but was not a tribal member. Mother stated that she could not contact him. Mother completed a form JV-130 indicating that she had "Cherokee - Texas" Indian heritage.

CWS sent notice of the dependency proceedings to the three Cherokee Indian tribes and the Bureau of Indian Affairs (BIA) on form JV-135. CWS did not provide a copy of the notice to either Mother or Father. The notice states that Ronald E. was born in Houston, Texas, and erroneously lists him as the paternal (not maternal) grandfather. CWS filed postal return receipts with the juvenile court from the three tribes and the BIA. Each of the three tribes responded that H. was not a Cherokee Indian child.

On September 11, 2008, and February 27, 2009, the juvenile court found that ICWA did not apply to H.

On October 1, 2009, the juvenile court held a permanent plan hearing. It received evidence from the CWS permanent plan report and addenda thereto stating in part that H. had resided with her paternal grandparents following her detention and that they were committed to adopting her. Mother stated that she disagreed with CWS's recommendation, but presented no evidence. Following a brief discussion, the parties submitted the matter. The court then concluded by clear and convincing evidence that H. was adoptable, and it terminated parental rights. (§ 366.26.)

Mother appeals and contends that the juvenile court erred by failing to ensure that CWS complied with the ICWA. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 852 [role of juvenile court to determine whether ICWA notice proper].) Father is not a party to this appeal.

*DISCUSSION*

Mother argues that the juvenile court terminated parental rights without confirming that CWS obtained sufficient information concerning her Cherokee heritage. (§ 224.3, subd. (c) [social worker required to make inquiry regarding possible Indian status of child]; *In re Louis S.* (2004) 117 Cal.App.4th 622, 630 [burden is on social

services agency to obtain "all possible information" about minor's possible Indian background and provide that information to the relevant tribe].) Mother asserts that CWS did not interview her mother and did not serve the completed notice JV-135 on her or Father. (25 U.S.C. § 1912(a) [notice requirement in ICWA proceedings].) She contends that the errors are prejudicial and require reversal.

The ICWA requires the social services agency seeking foster care placement or the termination of parental rights to notice the Indian child's tribe or the BIA (if the tribe is unknown) of the pending dependency proceedings and the tribe's right to intervene. (25 U.S.C. § 1912(a).) Notice must contain the Indian child's name, birthplace and birth date; the name of the tribe in which the child is enrolled or eligible for enrollment; the names, addresses and identifying information of the child's parents, grandparents and great grandparents; and a copy of the dependency petition. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) The social services agency bears the burden of obtaining all relevant information regarding the dependent child's possible Indian background and providing that information to the relevant Indian tribes or, if the tribes are unknown, the BIA. (*In re Louis S.*, *supra*, 117 Cal.App.4th 622, 630.) Generally, deficiencies in an ICWA notice are prejudicial error, but may be harmless under some circumstances. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 577.)

Here Mother stated that she had "very little" Cherokee heritage through her father, Ronald E., but that he was not a tribal member and that she was unable to contact him. (Ronald E. was either deceased or divorced from Mother's mother.) This scant information arguably did not invoke CWS's duty to notify the Cherokee Indian tribes of the dependency proceedings. (*In re Z.N.* (2009) 181 Cal.App.4th 282, 297-298 [mother reported that child's grandmother was Cherokee, but neither mother nor grandmother had tribal affiliation].) Nevertheless, CWS mailed notice of the dependency proceedings to the three Cherokee Indian tribes and the BIA on notice form JV-135, received responses indicating that H. was neither an Indian child nor eligible for enrollment, and filed the responses and return postal receipts with the juvenile court.

Although CWS erroneously states on the notice that Ronald E. is a paternal grandfather, the notice also states that Mother "has Cherokee through her father, Ronald [E.], who was born in Houston, Texas." In view of this statement, the erroneous checking of the form box "Paternal" is harmless error. Mother also has not demonstrated how providing her and Father copies of the notice would have generated additional family information. (*In re Miracle M.* (2008) 160 Cal.App.4th 834, 847 [parent did not establish how reversing ICWA orders would produce additional information of child's possible Indian ancestry].)

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

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Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy, for Plaintiff and Respondent.